UNITED
NATIONS

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Security Council

Distr.
GENERAL

S/AC.26/1999/6
19 March 1999

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE SECOND INSTALMENT OF "E2" CLAIMS

GE.99-61009

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Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. Bernard Audit (Chairman), José-María Abascal and David D. Caron, at its twenty-first session in 1996, to review claims filed with the Commission on behalf of corporations and other legal entities. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38 (e) of the "Provisional rules of claims procedure" (S/AC.26/1992/INF.1)(the "Rules"), 1/ concerning 178 claims submitted by corporations. Each of the claimants seeks compensation for damages arising out of Iraq's 2 August 1990 invasion and subsequent occupation of Kuwait.

2. The 178 claims under review by the Panel represent the second instalment of "E2" claims. These claims were selected by the secretariat of the Commission from among the entire group of "E2" claims on the basis of criteria established under the Rules. These include (a) the date of filing with the Commission, (b) the claimant's type of business activity, and (c) the type of loss claimed. A description of the claims is set out in chapter I below, followed in chapter II by the procedure used by the Panel in processing the claims.

3. The role and tasks of a panel of Commissioners, the applicable law and criteria, the liability of Iraq and a description of the applicable evidentiary requirements have been stated in detail in the Panel's first report. 2/ In accordance with this framework, three tasks have been entrusted to the Panel in the present proceedings. First, the Panel must determine whether the various types of losses put forward fall within the jurisdiction of the Commission and are thus, in principle, compensable. Second, it must verify whether the losses that are in principle compensable have in fact been incurred by a given claimant. Third, it must value those losses found to be compensable. These successive steps are described in chapters III, IV and V, respectively, followed by the Panel's recommendations.

I. THE CLAIMS

4. The 178 claims in this instalment for the most part allege losses sustained as a result of a general decline in business operations during the period of the invasion and occupation of Kuwait and in some instances after that period. Many, but not all such claimants, were operating in the tourism industry.

A. Categorization of the claims

5. The Governing Council has provided guidance on how to categorize the claims in this instalment for processing purposes. Article 17 of the Rules specifically provides for the categorization of claims by the secretariat. Article 38(a) of the Rules further states that "[i]n so far as possible, claims with significant common legal and factual issues will be processed together". The purpose of such grouping is to allow similar claims to be analysed in a consistent and effective manner.

6. Given the large number of claims in this instalment, and in keeping with the Rules, the Panel decided to further subdivide the claims according to industry type, the country or geographical location where the loss is stated to have occurred, and the place of incorporation or organization of the claimant. This was also justified by the fact that the impact of Iraq's invasion and occupation of Kuwait varied according to the geographic location of the various countries involved and their political stance vis-à-vis Iraq's actions. In many instances, the country where the loss is said to have occurred will be that where the claimant is organized, incorporated or maintains a presence. However, in some instances, claimants in this instalment are alleging they sustained losses in respect of a portion of their business conducted outside such a country.

B. Breakdown of the claims

7. From the perspective of the type of industry involved, the main distinction in the present instalment is between tourism and non-tourism claims. Claims are further subdivided according to the geographic area where the asserted loss was suffered.

1. Tourism claims

8. Many claimants have stated that, following Iraq's invasion and occupation of Kuwait, there was a consequential and substantial decline in

the number of incoming tourists to the Middle East and surrounding regions in general, and to each of their countries of operation in particular. The claimants each seek compensation for losses allegedly suffered as a result of the ensuing decline in their business revenues. The following description of the claims summarizes the allegations made by the claimants.

(a) Cyprus

9. Eleven claimants from Cyprus are included in this instalment. They all seek compensation for losses incurred in their local businesses. These claimants are hotel owners, a tour operator and the holder and operator of a duty-free concession.

10. The Cypriot claimants generally assert that, at the time of Iraq's invasion and occupation of Kuwait, a large percentage of their clientele were incoming tourists from the United Kingdom. Several contend that, as a result of Iraq's invasion of Kuwait and the subsequent hostilities, the Government of the United Kingdom categorized Cyprus as being within the "danger zone" and issued warnings to potential tourists to cancel any travel plans to Cyprus. Some add that it was the existence of British military bases on Cyprus that placed Cyprus within the "danger zone". The claimants state that, in view of these circumstances, many tourists cancelled their pre-arranged holidays while other tourists delayed travelling to Cyprus pending the outcome of military operations, and that British tourists who were in Cyprus at the outbreak of the Allied Coalition military action, in January 1991, were repatriated to the United Kingdom. On the basis of these allegations, the claimants assert that the number of incoming tourists to Cyprus during the period 2 August 1990 to 2 March 1991 declined substantially. Hotel owners state that the occupancy levels in their establishments declined, causing a loss of revenue and profits. Some further state that prior to 2 August 1990 they had agreements with tour operators from the United Kingdom pursuant to which the tour operators had undertaken to fill a specified number of hotel rooms on an allotment basis, for a period including that of the invasion and occupation of Kuwait. These claimants assert that, as a result of Iraq's invasion of Kuwait, these contracts were cancelled by the tour operators due to security concerns for their clients, which resulted in lost revenues to the claimants.

11. Some of the Cypriot claimants also claim compensation for the decline in revenues derived from tourism-associated businesses such as restaurants, discotheques and car-hires.

12. One Cypriot claimant is the licensee of two airport duty-free shops. This claimant states that approximately 95 per cent of its sales were to overseas tourists visiting Cyprus and that the invasion and occupation of Kuwait caused a reduction in the number of incoming flights and tourists to the island and consequently a reduction in its business. The claimant also asserts that, due to this adverse effect on its business, it was unable to afford the renewal fees for its licenses for the ports of Limassol and Larnaca, which resulted in the loss of its income-producing assets for a period of four years.

13. Some Cypriot claimants state that, after the cessation of hostilities, they were forced to offer their clients and tour operators reductions of up to 40 per cent on normally contracted room rates in order to re-establish the normal influx of tourists to Cyprus. These claimants seek compensation for the downturn in profits resulting from the reductions in prices they were forced to offer to clients.

(b) Egypt

14. This instalment includes 67 claims submitted by claimants in the Arab Republic of Egypt. All of these claims are for losses incurred locally; and the majority are from hotel owners and tour operators who state that, as a result of Iraq's invasion and occupation of Kuwait, the number of incoming tourists to Egypt declined significantly, thereby causing a corresponding decline in business revenues. The main reasons cited by the claimants for the decline in the number of incoming tourists are the proximity of Egypt to the area of conflict, the fear of escalation of the conflict and the disruption of air traffic lanes.

15. In addition to the hotel owners and tour operators, some claimants are transport providers whose primary source of income was derived from the supply of transportation to hotels, airports and tourist sites. Essentially, these claimants state the same facts as the hotel owners, namely, that the decline in the number of incoming tourists to Egypt during the period of the invasion and occupation led to a decline in their business revenues, for which they seek compensation. A few claimants also claim for losses associated with the lease of vessels and buses resulting from the decline in tourist passengers. One claimant seeks compensation for the loss sustained on the sale of a bus that it was purportedly forced to sell due to the depressed condition of the tourism industry.

16. This instalment also includes one claimant incorporated in Germany who states that its primary activity was the organization of group tours to Egypt for its European clientele. The claimant states that its European clients cancelled pre-arranged trips to Egypt because of concerns about security, given Egypt's proximity to the area of conflict.

(c) Israel

17. The majority of Israeli claimants are hotel owners and tour operators seeking compensation for the downturn in tourism to Israel. All of these claimants state that the threat of scud missile launches against Israel, followed by actual missile attacks after 16 January 1991, and the risk that Israel might be drawn directly into the conflict, resulted in a significant decline in tourism to Israel.

18. While most of these claims are for a decline in business revenues sustained during the period 2 August 1990 to 2 March 1991, a number also are for losses incurred for various periods of time following 2 March 1991, ranging from one month to a year or more. The latter claims are generally based on the contention that it took some time for business activity to return to normal levels.

(d) Turkey

19. One claim in this instalment has been filed by a tour operator from the Netherlands who states that, as a result of Iraq's invasion of Kuwait, its business, which consisted primarily of organizing tours to Turkey, declined substantially. The increased risk of terrorist attacks against citizens of countries participating in the Allied Coalition forces and the proximity of Turkey to Iraq are cited as the reasons why clients cancelled proposed and confirmed vacations to Turkey.

(e) Morocco and Tunisia

20. Included in this instalment are a few claims from travel agencies and tour operators located in the United Kingdom who specialize in the organization of tours to Morocco and Tunisia. These claimants assert that their European clients cancelled proposed and confirmed tours to those two destinations, which resulted in a decline in the claimants' businesses. The claimants refer to government travel warnings to their citizens allegedly advising them not to travel to these countries due to security risks resulting from the situation in the Persian Gulf region.

(f) Mediterranean and Black Sea region

21. One claimant in this instalment operated a cruise ship, flagged in Liberia, in the Mediterranean and Black Sea region at the time of Iraq's invasion and occupation of Kuwait. The claimant asserts that, due to these events and the consequential fear of terrorist attacks against shipping concerns in those regions, it was forced to fully cancel its itinerary of 14 cruises to the Mediterranean and Black Sea scheduled for the period April 1991 to November 1991 and replace it with cruises to the Caribbean. The claimant seeks compensation for lost profits, including ticket revenue and on-board earnings, as well as for additional passenger food and port charges it sustained during the period April 1991 to November 1991.

(g) European countries

22. Several corporations from European countries, primarily tour operators and travel agencies, have claimed for business losses allegedly suffered as a result of Iraq's invasion and occupation of Kuwait. These claimants assert that during the period 2 August 1990 to 2 March 1991, people were generally reluctant to travel within Europe and elsewhere due to a fear that terrorist attacks against tourists would occur as a result of the situation in the Persian Gulf region. One claimant from the Netherlands specialized in organizing cultural and sporting tours to Europe for university and college students from the United States; this claimant alleges that all of its pre-arranged tours for the period 2 August 1990 to 2 March 1991 were cancelled.

23. One claimant from Germany seeks compensation for losses sustained because a credit card company refused to pay a Kuwaiti client's charges after the 2 August 1990 invasion of Kuwait. The claimant asserts that following that date all Kuwaiti accounts were frozen, so that the credit card company only paid the claimant the guaranteed amount. The claimant seeks compensation for the balance of the outstanding debt.

2. Non-tourism claims

24. Most of the non-tourism claims have been submitted by Israeli corporations for losses incurred in Israel itself. The remaining ones have been submitted by corporations from various countries for losses incurred in Kuwait and other countries in the Middle East. Most of the claims are for decline in business, and they include claims made by manufacturers of chemicals and other related products, transport companies, agribusiness

concerns, and retail and service providers. Some of the claims are based on losses arising from contracts with Kuwaiti and Iraqi parties.

(a) Kuwait

25. Several claimants in this instalment, namely travel agents or hotels, are seeking compensation for the unpaid bills of Kuwaiti parties for services provided in Cyprus, Egypt and Germany prior to Iraq's invasion and occupation of Kuwait. One seeks compensation for unpaid accounts of Kuwaiti travel agents for customers who visited Cyprus; these unpaid accounts are dated from September 1987 to April 1993. Another seeks compensation for losses due to the failure of six Kuwaiti hotel guests to pay accounts dated from 15 August 1990 to 19 June 1991. A third seeks compensation for the unpaid account of a Kuwaiti client who stayed at its premises during July 1990.

26. One claimant, a Liechtenstein corporation in the business of media sales, asserts losses in connection with its business activities conducted in Kuwait. The claimant states that, at the time of the invasion of Kuwait, it provided advertising services to several leading magazines in that country on a "rolling" contractual basis and that, as result of the Iraqi invasion and occupation, these magazine companies were forced to close down and did not reopen until several months after the end of the occupation. The claimant further states that it provided advertising services on a regular basis to other clients in Kuwait who also were forced to close as a result of the invasion and occupation. The claimant seeks lost revenue and profits that it would have earned had those events not taken place.

27. One claimant from the United Kingdom seeks compensation for the loss of tangible assets in the form of sporting and leisure equipment, stating that the equipment disappeared from its premises in Kuwait during the period 2 August 1990 to 2 March 1991 as a result of looting by the Iraqi military forces.

(b) Iraq

28. One claimant states that it had a contract with the Iraqi State Organisation for Tourism to manage several hotels located in Basra and Baghdad in return for a fee. The claimant asserts that, as a result of Iraq's invasion and occupation of Kuwait, it was unable to continue

operating the hotels, and seeks the fee revenue for the unexpired period of the contract, namely until 31 March 1996.

29. A travel agency from the Netherlands states that prior to Iraq's invasion and occupation of Kuwait it had reserved and paid for, on behalf of clients, seats for travel on Iraqi Airways that were to be used during the period between 2 August 1990 and 2 March 1991. The claimant asserts that, because of the invasion, travel on the booked flights could not be undertaken and that it was unable to recover the prepaid amounts, for which it bore the cost.

(c) Israel

30. Claimants active in Israeli business sectors other than tourism, such as manufacturing, construction, retail sales, hospitals, accounting firms and cinemas, state that they were unable to continue operating their businesses or that they suffered a significant decline in revenue during the period of the invasion and occupation of Kuwait and, in some cases, for several months thereafter. Based on the specific factual patterns described by the claimants, these claims can be subdivided into three groups.

(i) Business interruption as a result of physical damage

31. One claimant states that its business was interrupted following material damage to its premises. This claimant is the proprietor of a retail centre that was under construction at the time it was hit by an Iraqi scud missile which, according to the claimant, destroyed the top two floors of the centre. This destruction in turn delayed the completion of the building and the subsequent opening of the centre by seven months. Although the claimant received compensation from the Government of Israel for the physical damage to the building, it states that this did not represent full compensation and therefore claims the balance. The claimant also seeks compensation for the loss of rent resulting from the delay in the opening of the centre.

(ii) General decline in business

32. The second group, comprising the majority of the Israeli non-tourism claims, is characterized by the allegation that threats made by Iraq against Israel, including that of using chemical weapons, followed by numerous scud missile launches between 18 January 1991 and 26 February

1991, had a disruptive effect on the Israeli economy in general and on the claimants' businesses in particular. The claimants generally state that the terror experienced in Israel during the period of the scud missile attacks, enhanced by the fear that the missiles might carry chemical weapons, caused people to stay confined to their homes or seek refuge in the security shelters provided by the Government, which resulted in a downturn in activity and revenues. Some businesses, such as retail outlets, claim that they could not obtain supplies of necessary stocks to operate normally during the relevant period. Other claimants assert that the threat generated by scud missiles after mid-January 1991 prevented their employees from attending work, making it impossible to maintain the regular level of services offered.

33. One claimant who produces computer equipment for export to the United States, Europe and other foreign markets asserts that during the period of Iraq's occupation of Kuwait, and for some time thereafter, many of its customers and potential customers were reluctant to order and purchase equipment from an Israeli company because of fears of possible delays in the delivery of the equipment due to Iraq's invasion and occupation of Kuwait. According to the claimant, the growth rate of its orders during the first and second quarters of 1991 was significantly lower than normal.

(iii) Specific measures of the Israeli Government affecting business

34. A number of non-tourism claimants, many of whom also potentially fall under the second group (general decline in business), refer to specific measures taken by the Government of Israel in response to the scud missile attacks, stating that those measures directly affected their businesses.

35. Some of these claimants are chemical and petrochemical companies located throughout Israel who state that they were forced to close down their manufacturing plants by specific order of the Government of Israel designed to prevent the risk of damage spreading, for example, by fire, if their factories were hit by a scud missile. Other claimants state that they were temporarily forced to cease operating because of a similar government order prohibiting them from storing or stockpiling dangerous and highly flammable raw materials at their premises.

36. Several claimants state that during the period of the invasion and occupation of Kuwait many of their employees were unable to report for work because of official restrictions implemented by the Government of Israel in the nature of curfew orders and border closures. As a result of these

measures, employees could not travel to their places of employment, which caused a general decline in productivity. In particular, three of these claimants who operate in the agribusiness industry state that due to the resulting shortage of labour, crops could not be tended and harvested, with the ultimate consequence that they were destroyed or substantially damaged. Two of them specifically claim compensation for contract-related losses based on their inability to sell their crops to cooperatives under then-existing marketing agreements.

37. Other claimants in this group had contracts to provide transportation services for school children. These claimants state that their activities were interrupted during the period 18 January to 26 February 1991, following a government order closing schools out of concern for the security of the children.

(d) Egypt

38. Included in this instalment is one claim by an Egyptian entity seeking compensation for the failure of a French client, a travel agent, to pay a debt for services performed prior to the invasion and occupation of Kuwait, on the ground that the French client went into bankruptcy due to the invasion and occupation of Kuwait.

(e) Jordan

39. A Jordanian claimant seeks compensation for losses under contracts with entities in Iraq, Kuwait, Egypt and Saudi Arabia to provide transportation for passengers between Jordan and each of these countries.

40. Concerning contracts to transport passengers to and from Iraq and Saudi Arabia, the claimant states that as a result of Iraq's unlawful invasion and occupation of Kuwait, it could no longer perform these services because its buses were prohibited from entering both Iraq and Saudi Arabia.

41. Concerning Egypt, the claimant alleges that the main source of passengers for this route was Egyptian workers travelling between Iraq and Egypt via Jordan. The claimant asserts that a contract with an Egyptian transport company lost its value as three million Egyptian workers were expelled from Iraq following the invasion of Kuwait.

42. The claimant similarly claims under a contract to provide bus services between Jordan and Kuwait. While stating that the contract, which was signed in 1988, had not come into operation as of 2 August 1990, the claimant asserts that it was due to come into operation shortly after 2 August 1990, and that it would have been profitable. The claimant states that expulsion from Kuwait of some 300,000 Palestinians, following the occupation of Kuwait by Iraq, eliminated a large portion of potential passengers for this bus route and that, accordingly, the value of the contract was largely diminished.

(f) United Arab Emirates

43. One claimant, incorporated and carrying on business in the United Arab Emirates, was the sole handling agent at the Dubai International Airport where it provided airport handling and ground engineering services. The claimant was also the general sales agent for many airlines in Dubai and other Emirates, an activity for which it earned a commission on sales.

44. The claimant seeks compensation for services provided to military air forces involved in the conflict, such as the delivery of equipment and the provision of manpower, during the period August 1990 to February 1991. The claimant also seeks compensation for the cost of various services it provided to the United States Air Force without receiving any payment.

II. PROCEDURAL HISTORY

45. Pursuant to article 16 of the Rules, the Executive Secretary of the Commission reported the significant factual and legal issues raised by the claims in reports Nos. 20 and 21, dated 16 July 1997 and 8 October 1997 respectively. Pursuant to paragraph 3 of article 16, a number of Governments submitted their information and views on the Executive Secretary's reports. These responses were transmitted to the Panel pursuant to article 32, paragraph 1.

46. As required by Article 14 of the Rules, in order to assist the Panel in the verification process, the secretariat made a preliminary assessment of the claims received in order to determine whether or not they met the formal requirements established by the Governing Council in Article 14. Deficiencies identified were communicated to the claimants in order to give them the opportunity to remedy those deficiencies. 3/

47. In December 1997, the services of expert consultants in loss adjusting and accounting were retained to assist the Panel and the secretariat in the review and analysis of the claims. The secretariat, together with the expert consultants, undertook a preliminary review of all 178 claims in order to identify what additional information or documentation, if any, could potentially assist the Panel in properly verifying and valuing the claims. Pursuant to article 34 of the Rules, notifications were dispatched to each of the claimants in this instalment ("article 34 notifications"), in which the claimants were asked to respond to a series of standard and specific questions and to provide additional documentation.

48. The information provided by the claimants in response to the article 34 notifications was used in the verification of the claims, in the valuation of the losses sustained by the claimants and in the determination of the appropriate amount of compensation, if any, to be awarded to a given claimant.

49. The services of statisticians were also used to assist the secretariat and the Panel in the verification of certain claims in the instalment. The precise use made of statistical tools in the verification process is described in more detail in chapter V.

50. After the Panel had made the necessary determinations as to which claims fell within the jurisdiction of the Commission and which did not,

members of the secretariat, together with expert consultants, undertook a mission to clarify responses to the article 34 notifications and to obtain additional information necessary for the verification and valuation of some of the claims within the jurisdiction of the Commission.

III. LEGAL ISSUES

51. In this chapter, the Panel considers issues that arise from two characteristics prevalent among the claims under review. First, most of the claims involve losses that occurred outside Kuwait or Iraq. Most of the claimants operated businesses that were physically located in other countries in the Middle East; others, although located in countries outside the Middle East, conducted operations within the region. Secondly, with a few exceptions, the claimants' business premises did not suffer any physical damage, nor did their business operations cease. Rather, the claimants maintain that, as a result of Iraq's invasion and occupation of Kuwait, they suffered a decline in their ongoing business operations and, consequently, sustained a loss of profits.

52. In its first report, the Panel had some opportunity to address the issue arising from the first characteristic above, in considering the impact of the "direct loss" requirement for a claimant operating construction projects in Saudi Arabia. Some aspects of the Panel's decision on that occasion are applicable to the claims under review. However, the claims presented in this instalment raise the issue of the compensability of losses incurred outside Kuwait or Iraq on a much broader scale. Accordingly, the Panel must elaborate on this issue in order to determine whether the claims fall within the jurisdiction of the Commission. Thereafter the Panel turns to the second issue, the compensability of losses for "decline in business".

A. Jurisdiction over losses outside Kuwait or Iraq and the requirement of directness

53. The Commission's jurisdiction over losses outside Kuwait or Iraq raises three related questions: first, whether there is a general restriction on the Commission's jurisdiction based on the location of the loss; secondly, what restrictions, if any, flow from the requirement that the loss be a direct consequence of Iraq's invasion and occupation of Kuwait; and, thirdly, the impact of intervening acts or events upon the compensability of the claims in question.

1. Absence of a general jurisdictional restriction based on the location of the loss

54. Security Council resolution 687 (1991) refers to "any direct loss or damage" resulting from Iraq's invasion and occupation of Kuwait, but does

not specify where such loss or damage should have occurred. Similarly, the decisions of the Governing Council do not limit per se the Commission's jurisdiction in terms of the place where the loss or damage was suffered or, for that matter, where the event causing the loss took place. 4/ Accordingly, the Panel finds that the place where the loss or damage was suffered by the claimant is not in itself determinative of the Commission's competence. Nevertheless, as discussed below, some restrictions flow from the requirement that the loss be a direct consequence of the invasion and occupation of Kuwait.

2. The relationship of the location of the loss to the requirement of directness

55. Security Council resolution 687 (1991) requires that the causal link between the invasion and the loss be "direct." The Panel finds, as it did with respect to the 'arising prior to' clause, that the object and purpose of the Security Council's insertion of the phrase "direct loss" in resolution 687 (1991) was to limit the jurisdiction of the Commission. 5/ This limitation is understandable in view of the magnitude of liability that would result from providing compensation for any detriment wherever felt, by any person, which somehow can be related to the invasion and occupation of Kuwait.

56. While the text of the resolution provides no specific guidance as to what constitutes a "direct loss", the Governing Council has done so in several of its decisions, in particular, decisions 7 and 15. Paragraph 21 of decision 7 provides the seminal rule on the directness requirement for category "E" claims. That provision reads:

> "21. These payments are available with respect to any direct loss, damage, or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:
>
> "(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
>
> "(b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;

"(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;

"(d) The breakdown of civil order in Kuwait or Iraq during that period; or

"(e) Hostage-taking or other illegal detention."

57. For losses in Kuwait or Iraq to meet the requirement of directness, it very often will suffice for a claimant to show that the loss resulted from one of the five acts or circumstances listed in paragraph 21. In the case of losses suffered outside Iraq or Kuwait, however, the possible causal link with a specified act or circumstance in paragraph 21 may be quite extended. A threshold issue for several claims in this instalment is, therefore, whether paragraph 21 should be read to mean that "any loss" suffered, as a result of one of the five acts or circumstances, is direct no matter how many intermediate links may exist between the act or circumstance in paragraph 21 and the loss.

58. The Panel, noting that Security Council resolution 687 (1991) requires that all losses be direct, concludes that paragraph 21 could not and did not relax this requirement. Indeed, the first sentence of paragraph 21 reiterates this basic requirement of resolution 687 (1991). This chapeau emphasizes the fundamental limitation in resolution 687 (1991) within which the remainder of the paragraph must operate. Accordingly, the Panel finds that the phrase "any loss suffered as a result of" in the second sentence does not mean that any loss, however remote, connected to the specific circumstances described is to be regarded as a direct loss. Rather, the second sentence of paragraph 21 of decision 7 simply constitutes a finding by the Governing Council that the five circumstances described are themselves to be regarded as a "direct" consequence of the invasion and occupation, thereby establishing that a claimant whose loss is directly caused by one of the constituent acts does not need to establish the further link to the invasion and occupation.

59. When examining the directness requirement, the Panel first considers the applicability to the claims under review of any of the five enumerated acts or events described in paragraph 21. With particular reference to the decline in business claims in this instalment, the facts supporting the claims can only relate to subparagraph (a) of paragraph 21 of decision 7 referring to "military operations or threat of military action by either

side during the period 2 August 1990 to 2 March 1991". As the Panel has previously concluded, 6/ where the loss cannot be related to one of the acts or circumstances identified in paragraph 21 of decision 7, a special showing is required to demonstrate that the loss sustained was a direct consequence of Iraq's unlawful invasion and occupation of Kuwait. 7/ The Panel therefore first considers which geographical areas involved in the claims under review were affected by the circumstances or events, set out in paragraph 21(a). The Panel then considers whether a special showing exists for the remaining claims.

(a) The scope of "military operations or threat of military action" and the location of the loss

60. Both this Panel and the "F1" Panel have already considered the meaning to be given to the phrase "military operations or threat of military action by either side" with respect to losses occurring outside Iraq or Kuwait. 8/ The "F1" Panel has decided, in the context of a government's claim for evacuation costs of its citizens (primarily diplomats) from countries other than Iraq and Kuwait, that a direct link can be shown where "actual military operations" or "an actual - as opposed to speculative - threat of military action" existed against a country from which persons were evacuated. The "F1" Panel further stated, agreeing with the "C" Panel, that a claim based upon an incident occurring outside Iraq or Kuwait needs to be more fully substantiated in order to establish the necessary causal link between the invasion and occupation of Kuwait and the alleged loss. 9/

61. In considering the issue, the "F1" Panel took account of, inter alia, the range and use of Iraqi scud missiles during the period of Iraq's invasion, and the location of any military actions conducted by either Iraq or the Allied Coalition forces in countries other than Iraq and Kuwait. Based on its investigation, the "F1" Panel found that "military operations or the threat of military action" were directed by Iraq against Saudi Arabia and Israel, in addition to Kuwait and Iraq. For those reasons, the Panel decided that "the costs incurred by Governments in evacuating citizens from Saudi Arabia and Israel should be compensated on the same basis as those costs incurred by Governments in evacuating persons from Iraq or Kuwait"; in contrast, it did not award compensation for costs of evacuating citizens from other countries in the Middle East, including Turkey, Iran, and Syria. 10/

62. Similarly, this Panel drew a distinction in its first report between claims for losses suffered in Kuwait and Iraq and elsewhere, noting that the further from the location of the actual invasion and occupation, the greater the evidence required from the claimant. 11/ As regards "military operations", the Panel observed that military operations outside of Kuwait and Iraq did not bring about the systematic and thorough damage inflicted by military operations in Kuwait or Iraq. It therefore concluded that in order to establish the requisite causal link to Iraq's invasion and occupation, claimants asserting losses arising out of "military operations" in a country other than Kuwait or Iraq "must make a specific showing that the loss or damage for which compensation is claimed resulted from a specific military event or events." 12/

63. Although the previous decisions of the Commission summarized in the preceding paragraphs focus primarily on the military operations of Iraq, the Panel notes that paragraph 21 of decision 7 refers to "military operations ... by either side." In the present instalment, Cypriot claimants point to the Allied Coalition's use of airbases on Cyprus as a factor in the decline of tourism to Cyprus. The Netherlands claim relating to Turkey, described in paragraph 19, presents a similar line of argument. These claims necessitate the Panel's consideration of the meaning of "military operations" in general and the scope of the military operations of the Allied Coalition forces in particular.

64. Military operations in the context of paragraph 21 refers to actual and specific military activities by Iraq in its invasion and occupation of Kuwait, or by the Allied Coalition in its efforts to remove Iraq's presence from Kuwait. The geographic scope of military operations corresponds to the zone of combat as circumscribed by the actions of either side. Such scope, for example, does not include remote locations utilized as staging areas for supplies and personnel or the airspace traversed when transporting such supplies and personnel.

65. The military operations of the Allied Coalition forces were directed at Iraqi forces in Iraq and Kuwait. The geographic scope of such operations thus includes Iraq, Kuwait and such immediately adjacent land territory, waters and airspace as were a necessary part of the conduct of such operations. Thus, the Panel found in its first report that the military operations of both Iraq and the Allied Coalition included for a time substantial portions of Saudi Arabia. In contrast, although aircraft operations were staged from airbases in southeastern Cyprus and southern Turkey, the Panel finds that neither staging area placed Cyprus or Turkey

within the zone of military operations as that phrase is used in paragraph 21. In any event, it must be established that such "military operations" were the direct cause of the loss claimed.

66. In the context of the present claims, the Panel finds that the repeated launching of scud missiles by Iraq upon Israel beginning on 18 January 1991, and the assistance of Allied Coalition forces aimed at eliminating or defending against such attacks, constituted "military operations" within the meaning of paragraph 21 of decision 7. In contrast, military operations by either side were not conducted in the territories of Morocco, Tunisia, Egypt, Turkey and Cyprus.

67. As regards the threat of military action (as distinct from actual military operations), this Panel in its first report made several findings which are relevant to claims by corporations for loss or damage alleged to have occurred outside of Iraq or Kuwait. In particular, where a claimant seeks compensation for loss or damage resulting from a "threat of military action", 13/ a specific showing must be made that the loss or damage for which compensation is sought directly resulted from a "credible and serious threat that was intimately connected to Iraq's invasion and occupation" and was within the actual military capability of the entity issuing the threat, as judged in the light of the "actual theatre of military operations" during the period involved. 14/

68. It follows from the preceding that two cumulative criteria must be met to find a threat of military action by Iraq outside Iraq or Kuwait for the purpose of establishing the Commission's jurisdiction over a claim based on that threat. One is that a specific threat by Iraq must have been directed at that location; the other, that the target of the threat, if any, must have been within the range of Iraq's military reach. While application of these criteria to the claims under review is fully discussed in chapter IV, sections C and E, they operate in the following manner:

(a) In relation to Morocco and Tunisia, neither of these countries was the subject of a threat by Iraq and, in any event, they were well out of the range of Iraq's military reach;

(b) In relation to Egypt, Turkey and Cyprus, none of these countries was the subject of a specific threat by Iraq. Apart from Cyprus, most of the territory of these countries was outside the range of Iraq's capability; and

(c) In contrast, Israel was the subject of a serious and credible threat of military action followed by actual military attacks, and the threat and eventual attacks were intimately connected to Iraq's invasion and occupation of Kuwait. This Panel consequently finds, as the "F1" Panel did before, that an actual and credible threat was directed by Iraq at Israel. As further explained in paragraph 102, such a threat to Israel existed as of 15 January 1991, in advance of the actual military attacks. 15/

(b) Absence of other basis for directness

69. As regards those countries which were not the subject of military operations or threat of military action, the Panel now considers whether the directness requirement is met for the claims under review independently of the circumstances or events enumerated in paragraph 21 of decision 7. The Panel notes that the claims for decline in business outside Israel rest on the assertion that a general sense of danger led to a loss of tourism activity. Indeed, the Panel takes notice of the fact that such concern was felt in many parts of the world as a consequence of Iraq's invasion and occupation of Kuwait, and that the perception of danger was generally greater in regard to the countries of the Near and Middle East. However, this sense of danger did not involve a differentiated assessment of the various sources of risk. Often it resulted from concern with local unrest, perhaps sympathetic to, but nonetheless independent of, Iraq. Thus, for example, a United Kingdom travel advisory issued on 14 January 1991 concerning travel to Morocco and Tunisia only cautioned that travellers should take precautions against the possibility of civil disturbances. The Panel acknowledges that, given today's ease of transportation, open borders and array of weaponry, many parts of the world plausibly felt threatened during the period of Iraq's invasion and occupation of Kuwait. But it is the wide, indeed global, range over which such non-specific and widely diffused perceptions of threat are felt that makes them alone an inadequate basis for meeting the directness requirement for compensation under the Commission's jurisdiction. The Panel concludes that a general apprehension felt by visiting and potential tourists, even if supported in some instances by general government travel advisories, or understandable in the circumstances, does not establish directness independently of the circumstances or events enumerated in paragraph 21 of decision 7. The Panel therefore finds, for the claims in this instalment, no basis for directness outside of those circumstances described in paragraphs 60 to 68, as regards losses suffered outside Kuwait or Iraq.

3. The impact of intervening acts

70. Because the Panel in the present instalment is dealing with losses suffered outside Iraq and Kuwait, the possibility that a loss was caused by factors other than Iraq's invasion and occupation of Kuwait deserves special consideration. It is recognized in legal theory that any single event may be the product of a chain of causation involving many different events. An intervening act is an act which, as part of the chain of causation, may be said to have produced the loss complained of and which occurs after the wrongful act in question. Several of the claims under review raise the question of whether the presence of the act of a third person or other force in the chain of causation relieves Iraq from liability under Security Council resolution 687 (1991).

71. In particular, the Government of Israel, in response to the Iraqi attacks on Israeli territory, took a number of actions restricting normal activities, such as the imposition of curfews and orders directed at chemical plants, schools, and other establishments. (See paragraphs 34-37.) The decisions of the Governing Council do not address this situation, and the Panel must therefore, in accordance with article 31 of the Rules, examine "other relevant rules of international law" on the subject. 16/

72. Under generally accepted principles of law, intervening acts of a third person that are a reasonable and foreseeable consequence of the original act do not break the chain of causation, and hence do not relieve the original wrongdoer of liability for losses which his acts have caused. 17/ Thus, in the present context, if it can be said that an intervening act was a reasonable and foreseeable response to Iraq's unlawful invasion and occupation of Kuwait, the resulting loss, despite such intervening act, will remain directly attributable to Iraq. These general principles are applied in chapter IV.

B. Compensability of losses for decline in business

73. The second issue before the Panel is whether a general reduction in the revenue of an ongoing business, which suffered a decline in operations but no physical destruction or temporary closure, constitutes a loss eligible for compensation. Finding that it is, the Panel next considers the principles regarding the period of time over which compensation may be awarded. Lastly, the Panel identifies the basic valuation principles applicable to this type of loss.

1. Compensability in principle

74. While Governing Council decision 9 provides guidance with respect to the compensability of business losses covered by Security Council resolution 687 (1991), it does not specifically address losses for decline in business. Decision 9 refers to three types of business losses which are eligible for compensation: (a) contract losses or past business practice; (b) losses relating to tangible assets; and (c) losses relating to income producing properties. More specifically, these provisions relate to losses (including lost profits) resulting from cancelled or frustrated contracts, damage to tangible property and damage to business concerns that were destroyed or had to temporarily close down and had to be rebuilt. In contrast, the claims under review largely involve businesses that continued to operate throughout the relevant period, but which suffered a decline in revenue.

75. However, decision 9 does not purport to identify all types of losses that may be compensable under resolution 687 (1991). Rather, paragraph 3 of the decision explicitly recognizes that other types of losses may be eligible for compensation, and further states that the Commissioners may identify principles relevant to such losses.

76. On this basis, the Panel finds that losses resulting from a decline in operations are compensable. Decision 9, in allowing compensation for the temporary closure of a business, recognizes that decline in revenue, the main effect of such closure, is compensable. Paragraph 16 of decision 9, in defining income-producing properties to include "various kinds of businesses whose value is determined not only by the value of their individual assets but also by the greater value they possess due to their capacity to generate income", emphasises that compensation should reflect the full economic value of an affected going concern. In addition, paragraph 19 of decision 9 formulates valuation principles to be applied to a loss of profits sustained through the destruction of income-producing properties, which refer to the projection in the future of past performance, a method that is equally applicable to losses resulting from a decline in business. (See paragraph 83.)

77. The preceding analysis based on decision 9 is confirmed by accepted principles of international law regarding State responsibility. The Draft Articles on State Responsibility by the International Law Commission, for example, provide in relevant part that "compensation covers any

economically assessable damage sustained ..., and, where appropriate, loss of profits". 18/

78. The Panel concludes that, in principle, compensation should be awarded to a claimant for the profits which, in the ordinary course of events, it would have been expected to earn and which were lost as a result of a decline in business directly caused by Iraq's invasion and occupation of Kuwait.

2. Compensation period

79. In its first report this Panel interpreted the Governing Council's decisions to mean that compensation for lost profits may be awarded for the period between the cessation of military operations and the time when the claimant reasonably could have resumed production at pre-invasion levels. 19/ Thus, compensation was awarded for so long as the business was affected by a destruction of assets or a disruption of activities, which itself was the direct result of Iraq's unlawful invasion and occupation of Kuwait.

80. Applying this reasoning to the claims under review, the Panel finds that a decline in business should be compensable for the period during which the claimants were unable to carry on business at levels prevailing before military operations began. Insofar as Israeli claimants are concerned, compensation may be awarded for a decline in business suffered from the time when the threat of military action first materialized, i.e., 15 January 1991, as determined under paragraph 102.

81. The Panel also recognizes that in some instances the full resumption of business operations was not likely to have taken place immediately upon the cessation of military operations, i.e., 2 March 1991. Consequently, the Panel determines that compensation should, in those instances, be allowed for a further period of time. The specific criteria for the determination of this "secondary period" of compensation are discussed in greater detail in chapter V, "Valuation of compensable claims."

3. Valuation principles

82. As stated above in paragraphs 74 to 76, decision 9 formulates valuation principles for earnings or profits which could reasonably have been expected. The Panel finds that the principles thus outlined for the valuation of future profits of a business which was destroyed or

temporarily closed are applicable, mutatis mutandis, to the valuation of losses due to a decline in business activity.

83. Paragraph 19 of decision 9 provides in relevant part:

> "In principle, the economic value of a business may include loss of future earnings and profits where they can be ascertained with reasonable certainty .... The method of a valuation should therefore be one that focuses on past performance rather than on forecasts and projections into the future. Compensation should be provided if the loss can be ascertained with reasonable certainty based on prior earnings or profits."

84. Two valuation principles thus emerge from decision 9: that the valuation of the loss of future earnings and profits be based on past performance rather than on forecasts, and that compensation should only be provided if the loss can be ascertained with reasonable certainty. The detailed application of these principles is discussed in chapter V, "Valuation of compensable claims".

IV. COMPENSABILITY OF THE CLAIMS PRESENTED

85. The Panel in this chapter examines the compensability of the claims before it in the light of the relevant Governing Council decisions and the conclusions reached above. As already noted, the location of the loss has particular significance for this issue; therefore, it is from that same perspective that the claims are examined.

A. Claims relating to Kuwait or Kuwaiti parties

1. Contracts with Kuwaiti parties

86. Several claimants seek compensation for the non-payment of amounts owed to them by Kuwaiti parties, as described in paragraphs 23 and 25.

87. Two other claimants seek compensation for losses allegedly sustained as a result of an inability to perform specific contracts with Kuwaiti parties for media sales and transportation services, as described in paragraphs 26 and 42, respectively.

88. With regard to losses relating to breaches of contract, frustration of contract, or impossibility of performance of a contract to which Iraq was not a party, paragraph 10 of decision 9 provides in relevant part that "... Iraq is responsible for the losses that have resulted from the invasion and occupation of Kuwait".

89. As regards the claimants seeking compensation for non-payment of amounts owed by Kuwaiti parties, several conclusions drawn by the Panel in its first report apply. Unlike the situation of contracts with Iraq, decision 9 requires claimants to provide specific proof that the other party's failure to perform was the direct result of Iraq's invasion and occupation of Kuwait. The failure should not, for example, stem from a debtor's economic decision to use available resources to ends other than the discharge of its contractual obligation, for such an independent decision would be the direct cause of the non-payment and the resulting loss would therefore not be compensable. Adequate proof that a contracting party's inability to perform resulted from Iraq's invasion and occupation of Kuwait would include a showing that performance was no longer possible, for example because the contracting party, in the case of an individual, was killed or physically impaired, or in the case of a business, ceased to exist or was rendered bankrupt or insolvent, as a result of Iraq's invasion and occupation of Kuwait. 20/

90. Applying those principles to the claims for the non-payment of accounts by a Kuwaiti party, the Panel finds that the claimants have all failed to establish that the non-payments were a direct result of Iraq's invasion and occupation of Kuwait.

91. As regards the claim for media sales losses, the Panel finds the portion of the claim based on specific contracts is not adequately substantiated. Concerning the remaining portion, which is for expected revenue from future sale of services, the claimant failed to submit financial documentation or other evidence sufficient to establish more than an expectation of possible future business. Accordingly, the Panel finds that no compensation may be awarded in respect of the claim.

92. As regards the claim for transportation services between Jordan and Kuwait, the Panel finds that the claimant has failed to provide satisfactory evidence that the conditions precedent, which would have caused its contract with the Kuwaiti entity to come into force, have been fulfilled and has failed to substantiate the amount of its loss, if any.

2. Tangible assets in Kuwait

93. Applying paragraphs 12 and 13 of decision 9, the Panel found in its first report that insofar as the claimant can prove that it departed from Kuwait during the relevant period and consequently lost assets present in Kuwait as of August 1990, the claimant will have established the requisite causal link between the loss of those assets and Iraq's invasion and occupation of Kuwait. 21/

94. The Panel finds that the claimant from the United Kingdom referred to in paragraph 27 has established that the assets for which it seeks compensation were present in Kuwait during the relevant period, that the damage to the assets was a direct result of the invasion and occupation of Kuwait, and that the claim is compensable.

B. Contracts with Iraqi parties

95. Three claimants described in paragraphs 28, 29, and 40, seek compensation for losses in respect of contracts with Iraq. 22/ They invoke paragraph 9 of decision 9 on the grounds that continuation of the contracts became impossible after 2 August 1990 due to Iraq's unlawful invasion and occupation of Kuwait.

96. With regard to contract losses as a result of frustration of contract or impossibility of performance, decision 9 provides:

> "9. Where Iraq did not breach a contract to which it was a party, but continuation of the contract became impossible for the other party as a result of Iraq's invasion and occupation of Kuwait, Iraq is liable for any direct loss the other party suffered as a result, including lost profits. In such a situation Iraq should not be allowed to invoke force majeure or similar contract provisions, or general principles of contract excuse, to avoid its liability."

97. The Panel finds that in cases where a contract with Iraq was ongoing as of 2 August 1990 and the contract became impossible to perform as a direct result of Iraq's invasion and occupation of Kuwait, the claimant is entitled to profits it could reasonably have earned on the contract had it been able to complete performance. In evaluating claims for such lost profits, the Panel requires specific and persuasive evidence of ongoing and expected future profitability.

98. Concerning the claim for the impossibility to perform contracts with the Iraqi State Organisation for Tourism, described in paragraph 28, the Panel finds that the claimant has met its burden of demonstrating that it became impossible for the claimant to continue performance of its contractual obligations as a result of the invasion, and the claimant is entitled to lost profits that it could have earned on the contracts. As of 2 March 1991, however, performance of the contracts became impossible because of the UN trade embargo, and under paragraph 6 of decision 9, the associated losses, in principle, are not compensable. However, paragraph 6 goes on to state that compensation may be provided to the extent that Iraq's invasion and occupation of Kuwait constituted a cause of loss which is separate from the trade embargo. The Panel finds that Iraq's invasion and occupation of Kuwait was a separate and distinct cause of the loss for the recovery period (as explained in paragraph 140, infra) and that consequently the loss is compensable until 30 June 1991.

99. The claim described in paragraph 29 is based on the impossibility of the claimant's clients utilizing booked tickets on Iraqi Airways during the period 2 August 1990 to 2 March 1991. The Panel finds that, notwithstanding any possible effects of the trade embargo, it would have been unreasonable, in view of the circumstances prevailing in Iraq at the time, to expect the holder of a ticket to stop over in Baghdad as was required by the terms of the ticket. Consequently, the Panel finds that

the claimant's loss, even though it may also have been attributable to the effect of the trade embargo, was a direct result of Iraq's invasion and occupation of Kuwait.

100. In relation to the contracts between a Jordanian bus company and Iraq, described in paragraph 40, the Panel finds that the claimant has established the impossibility of performing its obligations to transport passengers between Jordan and Iraq during the period of 2 August 1990 to 2 March 1991. However, after 2 March 1991, the Panel finds that the claimant's continued inability to perform its obligations under the contract was due to the effect of the trade embargo and consequently, under decision 9, losses for the period after 2 March 1991 are not compensable.

C. Claims involving Israel

101. The claims filed by Israeli corporations are nearly all for losses resulting from business disruption associated with the invasion and occupation of Kuwait. 23/ The Panel in chapter III found that military operations and threats of military actions were directed at Israel; it remains to determine the exact dates during which those events took place. The Panel then sets out its other findings and conclusions concerning the compensability of the alleged losses in Israel.

1. The periods of threat of military action and military operations

102. After its invasion of Kuwait on 2 August 1990, Iraq made several specific threats to attack Israel. These threats against Israel were specifically linked by Iraq to the Allied Coalition forces undertaking action to force the withdrawal from Kuwait by the occupying Iraqi forces. 24/ Since the deadline set by Security Council resolution 678 (1990) for such withdrawal was 15 January 1991, the Panel determines that as of 15 January 1991, when such deadline expired, and until the cease-fire resolution came into effect, there existed a credible and serious threat of military action directed at Israel that was intimately connected to Iraq's invasion and occupation of Kuwait. Consequently, the Panel determines that losses suffered in Israel from 15 January to 2 March 1991, which were the direct result of this threat, are compensable.

103. From 18 January 1991 until the cease-fire resolution came into effect, Israel was subjected to 40 scud missile attacks launched indiscriminately throughout the country. This, the Panel finds, constituted actual "military operations" as defined in paragraph 21 of

decision 7. Consequently, any losses suffered in Israel from 18 January 1991 to 2 March 1991 as a direct result of these military operations are compensable.

104. As explained in paragraph 140, the compensation period may extend beyond that of military threat or operations to the extent that the claimant's business could not resume operating at its normal level immediately upon the date when the cease-fire resolution came into effect.

2. Other findings and conclusions

105. A further issue to be considered is whether the actions of the Government of Israel in imposing curfews, prohibiting the stockpiling of certain dangerous substances, closing down certain factories, and closing schools could be said to constitute intervening events that sever the causal connection to Iraq's invasion and occupation of Kuwait. Applying the principles of reasonableness and foreseeability set forth in paragraph 72, the Panel finds that those actions taken by the Government of Israel were implemented as part of a government's duty to protect its citizens, in particular against indiscriminate and life-threatening attacks on the civilian population. Being therefore reasonable and foreseeable in the circumstances, those measures do not sever the connection between the invasion and occupation of Kuwait and the losses.

106. Similarly, in relation to claims for decline in tourism-related businesses, the Panel finds that the decisions of tourists not to travel to Israel during the period of military operations or threat of military action were foreseeable reactions and that they, as such, do not break the chain of causation.

D. Claims involving the United Arab Emirates

107. As described in paragraph 44, one claimant from the United Arab Emirates seeks compensation for services provided to military forces, in particular, the United States Air Force. Governing Council decision 19 states that "the costs of the Allied Coalition forces including those of military operations against Iraq, are not eligible for compensation". Therefore, inasmuch as no member of the Allied Coalition forces could obtain compensation for the cost of such services if it had paid for them, the Panel finds that this claimant likewise cannot obtain compensation for the same costs.

E. Claims involving other countries

108. The remaining claimants in this instalment seek compensation for losses suffered in Cyprus, Egypt, Jordan, Tunisia, Morocco, Turkey, the Mediterranean and Black Sea region and Europe. As stated in chapter III of this report, these claimants must show that the particular country in which the loss was suffered was the subject of a credible and serious threat of military action by either side, within the meaning of paragraph 21 of decision 7, during the period 2 August 1990 to 2 March 1991, in order for the claims to be compensable. For the reasons set forth in the following paragraphs, the Panel finds that none of the claims alleging losses suffered in the preceding countries meets this requirement.

1. Cyprus

109. The Panel notes that there were British bases on the island of Cyprus that were utilized during the period of, and in relation to, the invasion and occupation of Kuwait. However, for the reasons stated in paragraph 64 and 65, such activities do not constitute "military operations" within the meaning of paragraph 21 of decision 7.

110. Cyprus was also within reach of Iraq's military capacity, at least in terms of the long-range scud missiles believed to be in Iraq's possession. However, Cyprus was not the subject of any specific threat of military action by Iraq. Likewise, Cyprus was never the subject of a travel advisory warning. 25/

111. The Panel finds that decisions by tourists not to travel to Cyprus and the repatriation of tourists by European travel agents therefore constituted independent decisions for which Iraq is not liable.

112. Accordingly, the Panel concludes that the claimed losses are not "losses suffered as a result of" "military operations or the threat of military action by either side" within the meaning of paragraph 21 of decision 7 and consequently are not a direct result of Iraq's invasion and occupation of Kuwait as required by Security Council resolution 687 (1991).

2. Egypt

113. Egypt was a member of the Allied Coalition and contributed troops that were involved in military operations against Iraq. As such, Egypt was the subject of the general hostility expressed by Iraq toward those

countries that were part of the Allied Coalition forces. However, Iraq does not appear to have directed specific threats against Egypt, other than statements against those who participated in or assisted the Allied Coalition forces in general. Moreover, except for a small portion of its northeastern border, Egypt was not within the range of Iraq's military capacity. Accordingly, the Panel finds that there was no credible and serious threat of military action, as defined above, against Egypt.

114. Accordingly, the Panel concludes that the claimed losses are not "losses suffered as a result of" the "threat of military action" within the meaning of paragraph 21 of decision 7 and consequently are not a direct result of Iraq's invasion and occupation of Kuwait as required by Security Council resolution 687 (1991).

3. Jordan

115. One claimant from Jordan seeks compensation for losses in respect of transportation contracts it had entered into with entities in Saudi Arabia and Egypt. (See paragraphs 40-41.) The Panel finds that the claimant has not provided sufficient evidence in support of these parts of its claim.

4. Tunisia

116. Two claimants from the United Kingdom maintain that there was, during the period of the invasion and occupation, an increased risk that tourists visiting Tunisia, particularly those coming from countries which were part of the Allied Coalition, would be the subject of terrorist attack. The claimants assert that some sectors of the Tunisian population overtly supported Iraq and its president, as manifested in civil demonstrations.

117. The Panel finds that Tunisia was not the subject of any threat by Iraq and that Tunisia was not within the range of Iraq's military capability. The perceived threat of terrorism, as may have been fostered by the existence of local demonstrations, does not constitute a threat of military action by Iraq and therefore does not come within the purview of paragraph 21 of decision 7. 26/ Accordingly, the Panel concludes that the claimed losses are not "losses suffered as a result of" the "threat of military action" within the meaning of paragraph 21 of decision 7 and consequently are not a direct result of Iraq's invasion and occupation of Kuwait as required by Security Council resolution 687 (1991).

5. Morocco

118. The claimants identified in paragraph 20 likewise seek compensation for losses suffered as a result of the decline of their tourist business in Morocco, asserting the same arguments as with regard to Tunisia.

119. Morocco was a member of the Allied Coalition forces and, in its capacity as such, contributed troops to the Allied Coalition. After the commencement of the Allied military operations on 16 January 1991, some governments issued travel advisories warning their citizens to exercise care if travelling to Morocco, due to civil unrest. 27/ However, Morocco was not within Iraq's actual military capability as measured by the range of the missiles in Iraq's possession.

120. Accordingly, the Panel concludes that the claimed losses are not "losses suffered as a result of" the "threat of military action" within the meaning of paragraph 21 of decision 7 and consequently are not a direct result of Iraq's invasion and occupation of Kuwait as required by Security Council resolution 687 (1991).

6. Turkey

121. One claimant from the Netherlands, who organizes tours to Turkey, seeks compensation for loss of profits resulting from the decline in that part of its business.

122. Turkey contributed forces to the Allied Coalition, of which it was a member, and amassed forces along its border with Iraq. Turkey also allowed the utilization of its airbases for air strikes by the Allied Coalition forces against Iraq and co-operated in other respects with the effort to remove Iraqi forces from Kuwait, notably by closing off an oil pipeline used for transporting oil from Iraq to international markets. As explained in paragraphs 64 and 65, such activities do not constitute "military operations" within the meaning of paragraph 21 of decision 7.

123. As a result of the assistance thus provided by Turkey to the Allied Coalition, there was speculation that Turkey would be attacked by Iraq. However, other than the general threats made against all members of the Coalition, at no stage during the relevant period did Iraq make a specific threat of military action against Turkey. Further, apart from a small section of its southern border, Turkey was outside the range of Iraq's

military capability. Accordingly, any threat to Turkey cannot be considered to be credible and serious.

124. Accordingly, the Panel concludes that the claimed losses are not "losses suffered as a result of" "military operations or the threat of military action by either side" within the meaning of paragraph 21 of decision 7 and consequently are not a direct result of Iraq's invasion and occupation of Kuwait as required by Security Council resolution 687 (1991).

7. Mediterranean and Black Sea region

125. As stated in paragraph 21, one claimant seeks compensation for losses associated with the cancellation of its entire itinerary of 14 cruises to the Mediterranean and Black Sea. The ports of call at which the proposed cruises would dock included Istanbul and Izmir, in Turkey; Odessa and Yalta, in the Ukraine; Athens, Mykonos, Santorini, Crete and Rhodes, in Greece; and Casablanca and Tangier, in Morocco.

126. While there may have been general concern for the safety of shipping in the Mediterranean Sea during the period of the invasion and occupation of Kuwait, it could not be said that the region was the subject of a specific credible threat by Iraq, and this is even less the case with the Black Sea. Further, the fact that, as stated by the claimant, the proposed route of the cruise was close to the Israeli coast is not sufficient to establish a credible and serious threat of military action within the meaning of paragraph 21 of decision 7.

8. Europe

127. Europe was outside the military capability of Iraq. Accordingly, the Panel concludes that the claimed losses described in paragraph 22 are not "losses suffered as a result of" the "threat of military action" within the meaning of paragraph 21 of decision 7 and consequently are not a direct result of Iraq's invasion and occupation of Kuwait as required by Security Council resolution 687 (1991).

V. VALUATION OF THE COMPENSABLE CLAIMS

128. Having determined which claims are compensable, the Panel addresses some considerations relevant to the ascertainment of the appropriate compensation, if any, to be awarded for each eligible claim. These considerations involve the procedures used to verify the claims and the methodology implemented to assess the amount of compensation to be awarded.

A. Verification procedures

129. The Panel used a number of means to verify the losses claimed and to determine the appropriate amount of compensation. Given the complexity of the valuation issues, the large number of claims under review and the volume of supporting documentation underlying the claims, at an early stage of the proceedings the Panel requested expert advice pursuant to article 36 of the Rules. This advice was provided by loss adjusting and accounting consultants and, with respect to certain aspects of the tourism claims, also by statisticians.

130. Article 35, paragraph 3 of the Rules states that claims by corporations and other legal entities "must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss." It is the responsibility of the Panel under article 35, paragraph 1, to determine "the admissibility, relevance, materiality and weight of any documents and other evidence submitted."

131. As explained in chapter II, questions were sent to the claimants pursuant to article 34 of the Rules in order to obtain additional documentation and information needed for a proper verification and evaluation of the claims, such as audited financial statements, detailed management accounts, and monthly revenue and expenses. The Panel also requested the secretariat to gather tourism statistics for the Middle East and data on the range and use of Iraqi scud missiles during the period of Iraq's invasion and occupation of Kuwait.

132. Under the Panel's supervision and guidance, the loss adjusters and accountants reviewed all the documents and other information submitted by the claimants and the data derived from research by the secretariat. To the extent applicable, generally accepted loss adjusting and accountancy procedures were used in verifying and valuing the losses. In addition, the consultants undertook cross-checks of the documentation submitted, in order to test the accuracy of the amounts claimed.

133. The Panel provided specific instructions to the expert consultants with respect to the time period during which an economic loss sustained by the claimants would in principle be compensable. Because the type and level of available evidence varied significantly, the Panel also instructed the consultants to use adjustment factors in evaluating the weight and sufficiency of the evidence presented in support of the value of the claims. The precise guidelines are discussed in paragraph 152.

134. With respect to tourism claims for which sufficient statistical information was available, the Panel was also assisted by statisticians who worked independently of the loss adjusters and accountants. It should be emphasized that statistical analysis was a further verification tool used to identify claims that warranted closer scrutiny by the Panel; the primary verification and valuation processes remained those applied by the loss adjusters and accountants. The statistical tools took the form of four benchmarks or measures which were derived by applying widely accepted methodologies to the claimants' responses to the article 34 questions, and also to data obtained from regional tourism industry boards. The claims identified by these statistical measures as falling outside the benchmarks were subjected to further examination in order to ascertain the reasons why they did so. Where necessary, the loss adjusters and accountants were again consulted. In all cases, either satisfactory explanations for the claim having fallen outside of the benchmarks were found, or the claim was already subject to adjustment for a deficiency in evidence.

135. The Panel carefully reviewed the calculations and recommendations of the expert consultants with regard to each claim and, to the extent it was satisfied with the results, applied them in assessing the amounts awarded. As appropriate, the Panel exercised its discretion in assessing the amount of compensation that should be awarded. The Panel's use of expert consultants in this manner is consistent with the previous practice of the Commission as well as the established practice of other international claims tribunals and commissions. 28/

B. Valuation method

136. The Panel hereafter specifies the time period for which lost profits are compensable and articulates the method used to calculate the claimant's loss.

1. Compensation period for lost profits

137. The Panel determined the time period during which any loss of profits sustained by claimants would be considered in principle compensable ("compensation period"). The award of compensation in an individual case was subject to the claimant having provided sufficient proof that a loss was actually suffered during that period.

138. As previously determined, the Israeli claimants were subject to a credible and serious threat of military operations as of 15 January 1991, and to military operations as of 18 January 1991, and these circumstances lasted until 2 March 1991. Accordingly, for purposes of the quantification of the losses claimed, the Panel determines that this six-week period, between 15 January 1991 and 2 March 1991, is the primary period during which compensation will be awarded (i.e., "primary compensation period").

139. The full resumption of business activities would not necessarily have taken place immediately upon cessation of military operations; there may have been a period of time during which those events could have had a continuing effect on the business of a claimant. Notably, in the case of hotels and tour operations, one could reasonably predict that a period of several weeks or months would elapse before normal activities resumed, since most tourists book tours and make other travel arrangements well in advance. Consequently, the Panel must determine as appropriate a further period of time during which a loss of profits sustained is compensable (i.e., a "secondary compensation period" or a "recovery" period).

140. In order to ascertain the secondary compensation period for tourism claims, the Panel determined the average date after the cessation of military operations at which the claimants' business revenue first reached or exceeded projected revenue. Having found that such period extended until 30 June 1991, the Panel considers that this span of four months after 2 March 1991 is a reasonable period for the tourism related claimants to resume normal operations, and that any loss of profits suffered during this period is compensable.

141. The secondary compensation period was relevant to cases where the claimant demonstrated a loss in the primary period and had shown that its tourism related business continued to be affected after 2 March 1991. Compensation for the secondary period was only recommended, however, when, taking the entire period as a whole, a net loss against projected revenue was found. If the secondary period showed no net loss, then no

compensation was recommended for that period, even though there may have been isolated months of losses offset by profits in other months.

142. A few non-tourism related claimants also submitted claims for periods extending beyond 2 March 1991. For such claims, the compensation period, if appropriate, was determined by the Panel on a case by case basis. The guiding principle followed is that losses are compensable until the point where the claimant's business could reasonably have been expected to return to normal levels.

143. In any event, for all claims considered by the Panel, the compensation awarded never exceeded the amount of the claim nor was compensation awarded for a period of time that extended beyond the period during which the claimant asserted the business was affected by the hostilities.

2. Calculation methods for the various types of losses

(a) Loss of profits

144. The vast majority of the compensable claims in this instalment sought compensation for lost profits. In keeping with the principles set forth by the Governing Council in decision 9, the Panel required the amount of profits lost during the compensation period to be ascertainable with reasonable certainty.

145. In order to ensure consistency as well as equality of treatment between claimants in similar situations, claims were grouped by industry types (i.e., hotels, travel agents, transport operations, manufacturers, agribusinesses and others). In evaluating a claimant's loss, generally accepted principles of accounting and loss adjusting were applied. In general, the valuation was performed in five main steps. Agribusiness claims, however, required a special method of valuation.

(i) General method

146. Step one: projection of revenues. Firstly, revenue for the compensation period was projected from historical monthly data obtained from the claimants. Given the seasonality of the tourism industry and the limited length of the compensation period (being, at most, five and one-half months), monthly data were considered necessary in order to measure, with reasonable accuracy, the amount of lost revenue sustained by

the claimants. Actual revenue reported for the compensation period was then deducted from the projected revenue to arrive at the lost revenue for the compensation period. This process was repeated, where applicable, for the secondary compensation period.

147. Where only annual data were available or where sufficient monthly data were not available to perform a valid projection, annual data for the last unaffected year were used as the basis for the projection of revenue for the compensation period. 29/ The "last unaffected year" is the last fiscal year prior to the year when the claimant asserts it was first affected by Iraq's invasion of Kuwait.

148. Where 18 to 36 months of historical monthly data were available, the Panel considered that the projections calculated on the basis of monthly data adequately incorporated an inflation factor. In instances where the claimant only had annual records or had insufficient monthly records to perform a valid projection of revenue for the compensation periods, and these records were stated in Israeli shekels, the Panel concluded that the use of annual data from earlier years as a basis for the projection of revenue, without taking into account the level of inflation in Israel at the time, would create a distortion. To avoid such a result, the Panel, taking into account economic data, made an adjustment for inflation.

149. Step two: factoring of variable costs other than wages. Once the lost revenue for the compensation period was determined, the historical operating costs of the business were analysed to identify the variable costs saved by the claimant as a consequence of the reduction in, or absence of, operations. This variable cost was expressed as a percentage of revenue, which, when applied to the lost revenue, resulted in a figure representing the lost revenue net of the variable costs.

150. Step three: specific analysis of wage costs. Where possible, wage costs were subject to a specific and more detailed analysis to account for the fact that in many businesses, while certain wage costs will be saved as the level of activity diminishes, others will be largely unaffected. In the case of hotels, the former would include the wages of seasonal staff employed during the high season, while management salaries would fall into the latter category. Where the factoring of wage costs could not be so refined, however, those costs were deemed to be totally variable, and subject to the standard variable cost estimation outlined in paragraph 149.

151. Step four: calculated amount. Lost revenues as determined in step one were reduced by variable costs and wage costs that were not incurred as a result of the decline in business, to arrive at the amount of lost profits for the period. Where the claimant had argued that the business was affected beyond 2 March 1991, the above step was repeated to calculate the loss for the secondary compensation period.

152. Step five: adjustment for evidentiary deficiencies. Lastly, the aggregate loss for the primary compensation period and the secondary compensation period (where relevant) was subject to a further adjustment based on the sufficiency of the evidence submitted. The verification of the claims revealed significant differences in the evidence available from claimant to claimant. After discussions with the expert consultants as to the level and type of evidence which claimants in the industries in question usually are able to produce, the Panel established guidelines setting a range of adjustment factors to be applied to the loss calculated by the method set out above. These guidelines were based upon other things, whether particular documentation, alone or together with other information, was considered sufficient evidence of the amount of a particular loss. The guidelines were then applied when examining the evidence actually presented in support of a given claim to arrive at the final recommended amount.

(ii) Agribusiness claims

153. The preceding method was not appropriate for the valuation of the three agribusiness claims for lost production, described in paragraph 36. These claimants had engaged an independent claims assessor to assist them in the preparation of the claims. The assessor reported that physical inspections and surveys of the claimants' plantations had been undertaken to determine the extent of the loss. This loss was then reportedly priced at the market value of the particular crop to arrive at the claimed amounts. The assessor's reports were reviewed, underlying documentation was requested and received, and the claimed losses were adjusted for potential overstatements and for losses occurring beyond the compensation period.

(b) Contract and contract-related claims

154. The eligible claims for contract losses were valued by computing what each claimant could have expected to earn under the terms of the contract had its continuation not been rendered impossible. Where applicable, the

cost savings brought about by the interruption were deducted in order to arrive at the total lost profit. The lost profit was then apportioned over the period during which it would have been earned under the contract. Only amounts that fell due within the compensation period were recommended for award. For this category of claims, the compensation period was determined on a case by case basis. (See paragraph 142.)

C. Currency exchange rate and interest

155. In this section, the Panel determines the exchange rate to be applied to claims where the losses are measured in currencies other than United States dollars, and the date from which interest will accrue. In keeping with decisions of previous panels, this Panel selects the date of the loss as the appropriate date on which the exchange rate is to be applied for non-contractual losses. The date when the loss occurred depends on the character of the loss. The claims for decline in business in this instalment concern losses that were suffered over an extended period of time. Consistent with the findings in its first report, 30/ the Panel selects the mid-point of the period during which the loss occurred as the date on which the exchange rate is to be applied to calculate the recommended amount. Concerning the appropriate rate of exchange to be used, the Panel applies the average of the monthly commercial rates available during the period of the loss, as evidenced by the United Nations Monthly Bulletin of Statistics.

156. With respect to the claim for the loss of tangible assets, described in paragraph 27, the Panel selects 2 August 1990 as the date of the loss and applies the prevailing rate of exchange on that date. 31/

157. With respect to the date from which interest will accrue for all compensable claims, in accordance with decision 16 of the Governing Council, the Panel selects the date when the loss occurred. In keeping with the applicable date on which the exchange rate is to be applied, the date when the loss occurred is the mid-point of the period during which the loss occurred.

D. Claims preparation costs

158. In a letter dated 6 May 1998, the Executive Secretary of the Commission advised the Panel that the Governing Council intends to resolve the issue of claims preparation costs at a future date. Accordingly, the Panel takes no action with respect to claims for such costs at this time.

VI. RECOMMENDATIONS

159. Based on the foregoing, the Panel recommends that the amounts set out below be paid in compensation for direct losses suffered by the claimants as a result of Iraq's unlawful invasion and occupation of Kuwait:

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Cyprus	4000108	Top Hotels Ltd.	£C	202,946	458,117	0
Cyprus	4000143	Adams Beach Hotel/Adamos Ioannou & Sons Ltd.	£C	680,000	1,534,989	0
Cyprus	4000144	LMK-Lamanko Ltd.	£C	40,104	90,528	0
Cyprus	4000147	Golden Arches Hotel	£C	318,700	719,413	0
Cyprus	4000149	Navarria Hotel	£C	340,300	768,172	0
Cyprus	4000150	Bertha White Arches Apartments	£C	156,119	352,413	0
Cyprus	4000152	Marina Hotel (Ayia Napa) Ltd.	£C	159,000	358,916	0
Cyprus	4000153	Ros Estates Ltd.	£C	482,755	1,089,740	0
Cyprus	4000154	Amathus Navigation Co. Ltd.	£C	758,060	1,711,196	0
Cyprus	4000156	Panktoris Duty Free Shops Ltd.	US$	400,000	400,000	0
Cyprus	4000166	Galaxy Tours Ltd.	£C	4,732	10,682	0
Egypt	4002688	International Travel Bureau of Egypt	US$	700,982	700,982	0
Egypt	4002690	Tarot Garranah Tours	LE	6,130,175	3,065,088	0
Egypt	4002691	Scarabee Travel Agency	US$	170,602	170,602	0

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Egypt	4002692	Moon River Tours Co.	US$	1,076,770	1,076,770	0
Egypt	4002697	Egyptian Riviera Tours	US$	140,300	140,300	0
Egypt	4002698	Uni Travel	US$	149,634	149,634	0
Egypt	4002699	Amarco Tours	US$	866,000	866,000	0
Egypt	4002700	Shams Transport and Tourism	LE	12,549	6,275	0
Egypt	4002701	Seti First Travel Co.	LE	5,000,000	2,500,000	0
Egypt	4002702	Watania Tours SAE	US$	89,559	89,559	0
Egypt	4002703	Zamalek Nile Cruises	US$	1,104,101	1,104,101	0
Egypt	4002704	Cosmos Tours	US$	972,000	972,000	0
Egypt	4002705	Titi Tourism & Transport Co.	US$	65,757	65,757	0
Egypt	4002706	Golden Eagle Tours	US$	8,000	8,000	0
Egypt	4002707	Aqua Tours	US$	150,000	150,000	0
Egypt	4002708	Oberoi Nile Cruises (Shehrayar & Shehrazad)	US$	1,238,862	1,238,862	0
Egypt	4002709	Osiris Travel Agency	US$	77,965	77,965	0
Egypt	4002711	Cairo Sheraton Hotel & Casino	US$	8,537	8,537	0
Egypt	4002713	Nout Tours	LE	1,253,156	626,578	0
Egypt	4002714	Sherry Nile Cruises	US$	779,315	779,315	0

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Egypt	4002716	Nile Co. for Hotels & Tourism (Oasis Hotel)	US$	1,924,842	1,924,842	0
Egypt	4002719	Semiramis Inter-Continental Hotel	LE	11,820,000	5,910,000	0
Egypt	4002721	Windsor Palace Hotel (Alexandria)	US$	121,213	121,213	0
Egypt	4002722	Rose Hotel	US$	44,570	44,570	0
Egypt	4002724	Nawrous Tours and Transport Co.	LE	75,532	37,766	0
Egypt	4002725	New Group Travel (NGT)	US$	35,938	35,938	0
Egypt	4002726	Eastmar Travel	US$	3,765,760	3,765,760	0
Egypt	4002727	Telestar Travel	US$	587,720	587,720	0
Egypt	4002728	Spring Tours	LE	5,364,564	2,682,282	0
Egypt	4002845	Hotel Concorde	LE	431,521	215,761	0
Egypt	4002924	Hotel Akhetaton Louxor (Bella Donna)	LE	3,442,591	1,721,296	0
Egypt	4002927	Floating Boat "Marhaba"	LE	3,179,025	1,589,513	0
Egypt	4002930	Sharabi Nile Cruise Co.	LE	1,268,427	634,214	0
Egypt	4002931	Fathy Hasan Baloul/Hilwan Floating Hotel (Travel Group Co.)	LE	111,800	55,900	0
Egypt	4002932	Master Cruise Bing/Magid Nabil Iryan	LE	698,016	349,008	0
Egypt	4002933	St. George Hotel	US$	177,312	177,312	0
Egypt	4002934	Misr Nile Cruise	US$	350,043	350,043	0

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Egypt	4002937	High Life Cruise Co.	LE	3,132,518	1,566,259	0
Egypt	4002938	Theba Company for Floating Hotels	US$	64,653	64,653	0
Egypt	4002939	Travco Nile Cruise Lines Co.	US$	1,099,189	1,099,189	0
Egypt	4002940	Liberty Nile Cruise (Nile Empress)	US$	320,621	320,621	0
Egypt	4002941	Happy Land Hotel	US$	250,000	250,000	0
Egypt	4002942	New Continental Hotel	LE	740,000	370,000	0
Egypt	4002943	Zamzam Co. for Floating Hotels	US$	1,892,137	1,892,137	0
Egypt	4002944	Mena Co. for Resorts and Hotels "Menaville"	LE	3,000,000	1,500,000	0
Egypt	4002946	Hotel Manial Palace	LE	2,651,836	1,325,918	0
Egypt	4002947	Tonsi Hotel	LE	236,660	118,330	0
Egypt	4002954	Hilton Fayrouz Village	LE	1,796,676	898,338	0
Egypt	4002955	Egyptian Co. for Floating Hotels (Nile Romance)	LE	6,457,065	3,228,533	0
Egypt	4002956	Indiana Hotel	LE	172,191	86,096	0
Egypt	4002957	Nile Bride Nile Cruises	US$	1,058,300	1,058,300	0
Egypt	4002958	Sindbad Tourism Co.	LE	800,000	400,000	0
Egypt	4002960	Al Waha Corp. for Touristic & Hoteleries Investments	LE	390,000	195,000	0

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Egypt	4002961	Imperial Cruises Co.	US$	462,394	462,394	0
Egypt	4002962	Egyptian Co. for Floating Hotels (Nile Beauty)	LE	4,252,199	2,126,100	0
Egypt	4002963	El Salam Village	US$	876,989	876,989	0
Egypt	4002965	Presidential Nile Cruises	US$	820,000	820,000	0
Egypt	4002966	Tiran Village	US$	203,721	203,721	0
Egypt	4002968	Shalakani Tours	US$	1,910,408	1,910,408	0
Egypt	4002969	Hotel Meridien Le Caire	US$	1,379,395	1,379,395	0
Egypt	4002970	Le Meridien Heliopolis	US$	487,950	487,950	0
Egypt	4002971	The Legend Nile Cruising Co. Ltd.	US$	1,052,000	1,052,000	0
Egypt	4002972	Presidential Nile Cruises (Nile Emperor)	US$	560,000	560,000	0
Egypt	4002973	The Princess Nile Cruising Co.	US$	385,000	385,000	0
Egypt	4002974	Cairo Marriott Hotel	LE	10,000,000	5,000,000	0
Egypt	4002975	Shedwan Tourism Village	LE	880,179	440,090	0
Egypt	4003038	Pyramids Nile Cruise & Hotels Co.	US$	3,183,404	3,183,404	0
Germany	4000373	Acora Hotel Apartments	DM	14,274	9,138	0
Germany	4000484	Helios Reisen GmbH	DM	2,479,600	1,587,452	0
India	4000670	Oberoi Hotels Pvt. Ltd.	US$	661,843	661,843	312,621

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Israel	4000237	Trans-Global Travel Ltd.	US$	186,750	186,750	69,033
Israel	4000238	Yofi Tours Israel Ltd.	US$	320,000	320,000	32,630
Israel	4000239	Jerusalem Omaryah Hotel Co. Ltd.	US$	1,486,157	1,486,157	434,133
Israel	4000240	Unitravel Ltd.	US$	180,000	180,000	23,911
Israel	4000241	Isram South Wholesale Tours & Travel	US$	924,190	924,190	0
Israel	4000242	Astoria Hotels Ltd	US$	156,995	156,995	8,508
Israel	4000243	Coral Beach Eilat Ltd.	FF	925,345	176,525	153,859
Israel	4000245	Palm Beach Hotel Ltd.	US$	630,200	630,200	44,862
Israel	4000247	Isropa Nazarene Tours	US$	168,341	168,341	0
Israel	4000249	Kenes Organisers of Congresses & Tour Operators Ltd.	US$	204,003	204,003	0
Israel	4000250	Ganei Hamat Hotel Ltd.	NIS	3,574,942	1,749,849	170,475
Israel	4000251	Dan Hotels Corp. (trading as Hotel Dan Panorama Tel Aviv)	US$	1,619,800	1,619,800	377,916
Israel	4000252	Dan Hotels Corp. Ltd. (trading as Dan Hotel Tel Aviv)	US$	2,149,800	2,149,800	720,154
Israel	4000253	Dan Hotels Corp. Ltd. (trading as Dan Carmel Hotel)	US$	437,800	437,800	356,869

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Israel	4000254	Accadia Ltd. (trading as Dan Accadia Hotel)	US$	475,200	475,200	123,790
Israel	4000255	King David Ltd. (trading as King David Hotel)	US$	2,370,700	2,370,700	102,698
Israel	4000256	Jerusalem Ceasar Hotel	US$	696,781	696,781	135,690
Israel	4000258	Moriah Hotels Ltd.	US$	1,645,000	1,645,000	750,705
Israel	4000259	Israel Petrochemical Enterprises Ltd.	US$	3,949,850	3,949,850	2,482,471
Israel	4000260	Ceasar Tiberias Hotel	US$	1,942,959	1,942,959	298,376
Israel	4000261	Dan Hotels Corp. Ltd. (trading as Hotel Dan Panorama Haifa)	US$	494,900	494,900	110,579
Israel	4000262	Avia Hotels Ltd.	NIS	312,750	153,084	16,621
Israel	4000263	Nazareth Hotel	US$	318,162	318,162	0
Israel	4000264	Hotel Cosmopolitan (1971) Ltd.	US$	2,031,500	2,031,500	2,031,500
Israel	4000265	Cosmopolitan Hotel (Ramada Continental Tel Aviv)	US$	924,805	924,805	238,146
Israel	4000266	Quiet Beach Hotel	US$	1,321,155	1,321,155	321,242
Israel	4000313	Bickel Flowers Ltd.	US$	193,700	193,700	161,513
Israel	4000317	Eshcolot Yehuda Tour 87	US$	14,615	14,615	0
Israel	4000318	Tour Bus Ltd.	US$	180,431	180,431	126,007

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Israel	4000319	Isralift (Industries) 1972 Ltd.	US$	550,000	550,000	0
Israel	4000320	Sightseeing Drive Yourself Ltd.	US$	90,000	90,000	0
Israel	4000324	Hotel Saint George International Jerusalem	US$	1,243,600	1,243,600	0
Israel	4000326	Dafna Hotel Ltd.	US$	132,000	132,000	7,183
Israel	4000329	Assuta Ltd.	NIS	1,171,000	573,177	578,843
Israel	4000330	Amico Tours Ltd.	US$	98,800	98,800	0
Israel	4000331	Nazareth Transport & Tourism Co. Ltd.	US$	906,460	906,460	98,125
Israel	4000336	Oil Refineries Ltd.	US$	3,312,410	3,312,410	1,788,467
Israel	4000337	Eshet Tourist Services Ltd.	US$	70,930	70,930	0
Israel	4000339	Ein Gedi Guest House Ltd. Partnership	US$	1,016,592	1,016,592	420,384
Israel	4000340	MNSR Hotel Management Ltd.	US$	382,060	382,060	382,060
Israel	4000342	GB Tours Ltd.	NIS	2,848,198	1,394,125	51,462
Israel	4000395	Dannie's Tours Ltd.	US$	121,050	121,050	0
Israel	4000397	Tiberias Hot Springs Co. Ltd.	NIS	4,657,435	2,279,704	227,412
Israel	4000398	Tar Hemed Ltd. Travel Touring Co.	US$	28,740	28,740	0
Israel	4000399	Vitalgo Textile Works Ltd.	US$	1,362,000	1,362,000	154,725

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Israel	4000400	Readymix Industries (Israel) Ltd.	US$	1,692,519	1,692,519	1,447,119
Israel	4000401	Electrochemical Industries (Frutarom) Ltd.	US$	2,777,418	2,777,418	2,032,385
Israel	4000402	King Solomon Palace Hotel Eilat Ltd.	US$	2,688,000	2,688,000	670,257
Israel	4000406	Tel Aviv Hilton Ltd.	US$	6,500,000	6,500,000	753,244
Israel	4000407	Shemesh Jerusalem Ltd. Kikar Zion Hotel	US$	1,088,000	1,088,000	0
Israel	4000408	Netanya Hotel Des Six Jours Ltd.	US$	330,802	330,802	2,971
Israel	4000410	Sport Hotel Partnership Eilat	US$	1,087,000	1,087,000	196,941
Israel	4000411	Riviera Hotel/Isrotel Hotel Management Ltd.	US$	625,000	625,000	105,591
Israel	4000415	Superjet Tours Ltd.	US$	126,628	126,628	22,185
Israel	4000417	Masi'Ei Kol Gil Ltd.	NIS	118,884	58,191	10,703
Israel	4000418	Dali Fashion Two Thousand Ltd. (Lev Cinemas)	US$	330,304	330,304	0
Israel	4000419	Tour Nof Ltd.	US$	275,000	275,000	5,546
Israel	4000420	Bay Heart Ltd.	NIS	4,813,789	2,356,235	495,140
Israel	4000421	Moriah Dead Sea Spa Hotel Ltd.	US$	1,245,000	1,245,000	748,737
Israel	4000422	Jordan River Hotel, Ganei Hadar Tourism Enterprises Ltd.	US$	4,224,976	4,224,976	106,154

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Israel	4000423	Medina Tours (Israel) Ltd.	US$	252,900	252,900	40,452
Israel	4000425	Lannet Data Communications Ltd.	US$	1,843,000	1,843,000	0
Israel	4000426	Moriah Eilat Resort Hotel Ltd.	US$	476,000	476,000	288,268
Israel	4000429	Gadot Petrochemical Industries Ltd.	US$	190,328	190,328	0
Israel	4000430	Lagoona Hotel Ltd.	US$	1,229,000	1,229,000	171,567
Israel	4000431	Vegetable Growers Association Ltd.	US$	2,286,701	2,286,701	2,265,106
Israel	4000436	Moviley Naharia Ltd.	NIS	140,000	68,527	0
Israel	4000438	Moriah Teberias Hotel Ltd.	US$	400,000	400,000	76,651
Israel	4000439	Ron Beach Hotel Ltd.	US$	450,000	450,000	72,003
Israel	4000440	Shulamit Gardens Hotel	US$	1,867,378	1,867,378	615,684
Israel	4000441	Ganei Menorah Hotel	US$	186,644	186,644	1,953
Israel	4000442	Hotel Eyal and Nurit Co. Ltd.	US$	693,000	693,000	146,472
Israel	4000443	HL Tours Ltd.	US$	120,000	120,000	48,421
Israel	4000444	Eilat Caesar Hotel Ltd.	US$	1,603,388	1,603,388	302,142
Israel	4000445	Moriah Tel Aviv Hotel Ltd.	US$	1,541,000	1,541,000	1,200,518

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Israel	4000504	National Flower Growers Association - Agricultural Cooperative Society Ltd.	US$	7,830,985	7,830,985	5,665,874
Israel	4000505	Tadmor Hotel	US$	64,079	64,079	7,676
Israel	4000507	Arieh Shasha Transporters Ltd.	US$	150,739	150,739	65,200
Israel	4000508	Peltours Travel and Tourism Ltd.	US$	1,600,000	1,600,000	436,707
Israel	4000509	Jerusalem Herzl Hotel Association	US$	3,600,000	3,600,000	195,803
Israel	4000510	Nof Ginosar-Hotel	US$	620,000	620,000	45,251
Israel	4000754	Somekh Chaikin	US$	975,000	975,000	138,733
Israel	4000755	Abadi Yosef & Simha Ltd.	NIS	187,058	91,560	4,580
Israel	4001102	Dizengoff Centre (founded by PILZ) Ltd.	US$	115,000	115,000	26,502
Israel	4001103	Chen Enrico Corp.	US$	283,528	283,528	73,980
Jordan	4002626	Jordan Express Tourist Transport Co.	JD	6,264,068	9,519,860	50,542 c/
Liberia	4001137	Princess Cruise Lines Inc.	US$	18,928,000	18,928,000	0
Liechtenstein	4001177	La Regie Libanaise de Publicite Internationale	US$	453,201	453,201	0
Netherlands	4001188	Koecklare BV Riverside Apartments	f.	35,323	20,058	0
Netherlands	4001442	K-Tours BV	f.	123,953	70,388	0
Netherlands	4001548	Aksoy Reizen	f.	388,000	220,329	0

Submitting country	UNCC claim number	Claimant	Amount claimed			Amount recommended (US$)
			Currency a/	Amount	Amount (US$) b/	
Netherlands	4001551	European American Travel BV	f.	60,186	34,177	0
Netherlands	4001558	Cross Country Travels Hillegom BV	f.	44,850	25,468	25,468
United Arab Emirates	4001750	Dubai National Air Travel Agency (DNATA)	US$	4,750,000	4,750,000	0 d/
United Kingdom	4002000	Tunisian Travel Bureau Limited	£ stg.	100,297	190,679	0
United Kingdom	4002128	Thomson Travel	US$	5,419,421	5,419,421	0 e/
United Kingdom	4002370	British Sub Aqua Club	US$	25,668	25,668	5,754

Notes to table of recommendations

a/ Currency codes: £C (Cyprus pound), LE (Egyptian pound), FF (French franc), DM (deutsche mark), NIS (new shekel), JD (Jordanian dinar), f. (Netherlands guilder), £ stg. (pound sterling), and US$ (United States dollar). Terminology Bulletin No. 343: Currency Units (ST/CS/SER.F/343) (United Nations, New York (1991)).

b/ For claims originally expressed by the claimant in currencies other than United States dollars, the secretariat has converted the amount claimed to United States dollars based on August 1990 rates of exchange as indicated in the United Nations Monthly Bulletin of Statistics, or in cases where this exchange rate is not available, the latest exchange rate available prior to August 1990. This conversion is made solely to provide an indication of the amount claimed in United States dollars for comparative purposes. In contrast, the date of the exchange rate that was applied to calculate the recommended amount is described in paragraphs 155 and 156.

c/ As regards UNCC claim No. 4002626, compensation of US$50,542 has been awarded for losses in relation to contracts with Iraq for transportation services. However, no compensation has been awarded for

claimed losses based upon contracts to provide transportation services between Jordan and Saudi Arabia and Egypt, due to insufficient evidence. No compensation has been awarded for claimed losses for transportation services between Jordan and Kuwait, because the claimant has not provided satisfactory evidence that certain conditions precedent were fulfilled and has failed to substantiate the losses. Consideration of other claims by the same claimant (claim No. 4005970) for losses in respect of a contract to transport tourists within Jordan has been deferred until a later instalment, when similar issues will be considered.

d/ As regards UNCC claim No. 4001750, no compensation has been awarded for costs in connection with the operations of the Allied Coalition forces due to the non-compensability of such costs. Consideration of other claims by the same claimant (claim No. 4005971) seeking compensation for the loss of operating earnings due to the suspension of flights and the loss of travel agency-related earnings in Dubai has been deferred until a later instalment when such issues will be considered.

e/ As regards UNCC claim No. 4002128, no compensation has been awarded for the claim due to the jurisdictional factor of no direct loss. Consideration of other claims by the same claimant (claim No. 4005969) relating to additional fuel costs, additional insurance costs, and additional costs due to rerouting of flights, has been deferred until a later instalment when such issues will be considered.

Geneva, 16 December 1998

(Signed) Mr. Benard Audit
Chairman

(Signed) Mr. José-María Abascal
Commissioner

(Signed) Mr. David D. Caron
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ S/AC.26/1998/7 ("E2(1) report"), paras. 38-48.

3/ Five claims for which compensation has been recommended have not rectified all formal deficiencies identified by this process. However, taking into account the claim and all other supporting documents, the Panel is of the opinion that these deficiencies are not material.

4/ Paragraph 21 of Governing Council decision 7 (quoted in paragraph 56) provides that a direct loss "will include any loss suffered as a result of" one of the constituent acts or events described in subparagraphs (a) through (e). Two acts or consequences described therein ([b] and [d]) refer to the location of the immediate events or circumstances which caused the loss but not the location where the loss was suffered. In contrast, the other three ([a], [c] and [e]) make no reference to either the location where the event causing the damage took place or where the loss was felt.

5/ See E2(1) report, para. 72.

6/ Ibid., paras. 108 and 156.

7/ The Panel also notes that the use of the word "include" in paragraph 21 preceding the list of circumstances presumed to establish a direct link to the invasion and occupation of Kuwait, indicates that the enumeration of circumstances is not exhaustive. Decision 15, paragraph 6, indeed, adds that there "will be other situations where evidence can be produced showing claims are for direct loss ... as a result of Iraq's unlawful invasion and occupation of Kuwait."

8/ "Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of claims by governments and international organizations (category "F" claims)" (S/AC.26.1997/6) ("F1(1) report"), paragraphs 94-96.

9/ F1(1) report, para. 94 (agreeing with the holding of the Panel in the First "C" report, p. 13).

10/ Ibid., para. 96; see also, para. 40.

11/ E2(1) report, paras. 253; 157-163.

12/ Ibid., para. 157.

13/ As the Panel found in its first report, although decision 7 does not define "threat", the drafting history indicates that the phrase should be

strictly interpreted in terms of its geographic scope (citing second working paper of Governing Council). Ibid., para. 160. The drafting history further indicates that, in using the phrase "threat of military action", the Governing Council intended that only losses which resulted from "threats that were highly credible in the light of actual military operations" were to be compensable. Ibid, para. 161.

14/ Ibid., paras. 163, 161. The ordinary meaning of the words "threat of military action" requires that the threat "meet a minimum threshold of seriousness," gauged with reference to, inter alia, the level of military action threatened, and the capability and credibility of the entity issuing the threat. Accordingly, a threat by Iraq beyond the range of its military capabilities and which is not highly credible in the light of actual military operations does not meet "the minimum threshold of seriousness." Ibid., para. 159.

15/ Unlike that of Saudi Arabia, the entire territory of Israel was subject to military action or the threat of military operations, given the small geographic size of Israel and its proximity to Iraq.

16/ In the absence of a specific customary rule of international law regarding intervening acts, the Panel refers to general principles of law. (Article 38(1)(c), Statute of the International Court of Justice.)

17/ See, for example, B. Cheng, General Principles of Law as Applied by International Courts and Tribunals (London, Stevens & Sons, 1953), pp. 249-53. See also, A.M. Honoré, "Causation and Remoteness of Damage", in A. Tunc (ed.), International Encyclopedia of Comparative Law, vol. XI: Torts (part 1)(1983), pp. 7-78 to 7-79. The concept is sometimes expressed as the principle that foreseeable intervening forces will not supersede the defendant's responsibility (i.e., they are not a "superseding cause"). See W.L. Prosser, Handbook of the Law of Torts (St. Paul, West Publishing Co., 1971), pp. 273, 278.

18/ Report of the International Law Commission on the work of its forty-eighth session, Draft Articles on State Responsibility, article 44(2), Yearbook of the International Law Commission, 1996, vol. II, Part Two.

19/ E2(1) report, para. 247.

20/ Ibid., para. 145.

21/ Ibid., para. 148.

22/ As the Panel has already found, the Governing Council used the word "Iraq" in decision 9 to mean the Government of Iraq, its political

subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. E2(1) report, para. 116.

23/ One claimant is seeking compensation for both physical damage to its premises as well as a decline in its business that occurred as a result thereof. (See paragraph 31.) The Panel determines that while physical damage is in principle compensable, as is the loss of turnover as a result thereof, the claimant in this instance has not provided sufficient evidence upon which to value either claim.

24/ In an interview on 27 December 1990, President Saddam Hussein stated: "If aggression were to take place, we should assume that Israel has taken part in it. Therefore, without asking any questions, we will strike at Israel. If the first strike is dealt to Baghdad or the front, the second strike will target Tel Aviv." (Mark Grossman, Encyclopedia of the Persian Gulf War (Santa Barbara, ABC-CLIO, 1995), p. 151.) At a press conference of Mr. Tariq Aziz, Iraq's then minister of foreign affairs, in Geneva on 9 January 1991, when asked the question, "Mr. Foreign Minister, if the war starts in the Middle East, in the gulf, will you attack Israel?," Mr. Aziz answered, "Yes, absolutely. Yes." (Mark Grossman, op. cit., p. 401. The same statement is quoted by Israel in a Letter dated 28 January 1991 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General, (S/22160/Rev.1).)

25/ None of the many travel advisories issued by the British Foreign and Commonwealth Office during the period of 3 January to 2 March 1991 warned against travel to Cyprus. Typical of travel advisories regarding Cyprus during this period was the advisory of 12 January 1991, which stated,

> "We see no reason for travellers to Egypt, Turkey, Cyprus or other countries in the region [i.e., Morocco, Greece, Oman, Libya] to change their plans in the light of recent developments."

26/ Cf. United Kingdom Foreign and Commonwealth Office travel advisory for 14 January 1991: "Morocco, Tunisia: Visitors - Travelers to Morocco and Tunisia should be aware of the risk of disturbances, particularly in cities. British Community - The British Community should keep a low profile and take sensible precautions against the possibility of civil disturbances."

27/ See travel advisories for Tunisia discussed in note 26.

28/ E2(1) report, para. 265.

29/ In the light of the importance of monthly data, the Panel found it necessary also to apply an adjustment where monthly data were not available.

30/ See E2(1) report, para. 287.

31/ See E2(1) report, para. 286.